

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Joint Application by SBC Communications)
Inc., Southwestern Bell Telephone Company,)
and Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell Long)
Distance for Provision of In-Region,)
InterLATA Services in Arkansas and Missouri)

CC Docket No. 01-194

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COMMENTS OF
NAVIGATOR TELECOMMUNICATIONS, LLC.

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September 10, 2001

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SUMMARY

It is the Commission's province to assess whether authorization of in-region interLATA service is appropriate. To the extent that the Commission's decision is based upon the state of local competition in the provision of local telephone services in Arkansas, the Commission should be fully and accurately informed.

Navigator respectfully submits that SWBT has not demonstrated the existence of local competition in Arkansas sufficient to justify SWBT's entry into the interLATA long distance market at this time. Particularly, Navigator asserts that SWBT has failed to satisfy Checklist Item No. 2, regarding access to network elements and OSS, as set out more fully below.

Navigator faces continuing obstacles in dealing with SWBT. Navigator offers specific examples of its ongoing problems with SWBT to illustrate that SWBT has not yet fulfilled all the criteria to justify its entrance into the interLATA long distance market. Specifically, Navigator offers comments addressing SWBT's imposition of UNE NRCs in Arkansas, billing errors, and other operational roadblocks.

Navigator invites the Commission, through these comments or through a site visit to our operations center, to view SWBT and the state of competition in Arkansas through the eyes of a CLEC.

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COMMENTS OF
NAVIGATOR TELECOMMUNICATIONS, LLC.

Navigator Telecommunications, LLC. ("Navigator") submits these comments in response to the Commission's *Public Notice* in the above captioned proceeding.¹

I. INTRODUCTION

Navigator is an Arkansas-based competitive provider of telecommunications services to residential and business customers primarily in the South, Midwest, and Southeast, including Arkansas and Missouri. Navigator is authorized to provide competitive local exchange service and interexchange service in approximately twenty states, with applications pending in others. Navigator is also authorized to provide interstate interexchange and international

¹ *Public Notice*, Comments Requested on the Application by SBC Communications, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Arkansas and Missouri, DA-01-1952 (August 20, 2001).

telecommunications services. Navigator offers local and long distance telecommunication services to residential and business customers.

II. LACK OF MEANINGFUL COMPETITION IN ARKANSAS

It is the Commission's province to assess whether authorization of in-region interLATA service is appropriate. To the extent that the Commission's decision is based upon the state of local competition in the provision of local telephone services in Arkansas, the Commission should be fully and accurately informed.

Navigator respectfully submits that SWBT has not demonstrated the existence of local competition in Arkansas sufficient to justify SWBT's entry into the interLATA long distance market at this time. Particularly, Navigator asserts that SWBT has failed to satisfy Checklist Item No. 2, regarding access to network elements and OSS, as set out more fully below.

A CLEC like Navigator daily faces a seemingly unending series of obstacles in dealing with SWBT. Not only does competition suffer, but consumers also suffer a loss of choices and the pricing benefits that competition can bring.

As a small company with limited resources, Navigator cannot offer a comprehensive response to all of the issues submitted by SWBT in this proceeding. Instead, it offers examples of its real-world experiences from daily operations. These examples help illustrate that SWBT has not yet fulfilled all the criteria to justify its entrance into the interLATA long distance market. Specifically, Navigator offers comments addressing SWBT's imposition of UNE NRCs in Arkansas, billing errors, and other operational roadblocks.

From its beginning, Navigator has sought to provide quality telecommunications services at competitive prices to both residential and business customers in its service areas, including particularly its home state of Arkansas. Navigator remains committed to providing local service to its residential and business customers.

Unfortunately, the current state of facilities-based local competition for residential service in Arkansas is in serious question. SWBT asserts that “local competition has taken root in Arkansas.” (SWBT Brief, p. 9). No one who examines the facts can conclude that local competition in Arkansas is thriving. It is not.

SWBT acts in ways that effectively block competition. Although the rate schedules proposed by SWBT in the A2A hold the promise of lower prices and increased opportunities, it is Navigator's experience that such a promise is illusory. Regardless of what SWBT represents to this Commission or to a CLEC like Navigator, or what SWBT sets out in an interconnection agreement, an accessible letter, or a written or verbal communication, the reality is that Navigator or any other CLEC relies on that information at its peril.

III. UNE NRCs IN ARKANSAS

A reasonable understanding of Navigator's interconnection agreement with SWBT, and an analysis of UNE costs as set out in the attachments to that agreement, indicates that UNE-P based provisioning of residential service would increase Navigator's profitability. Based on that, as well as on representations from SWBT about how such service would be implemented operationally, Navigator began deploying UNE-based residential service in Arkansas through conversion of its existing resale customers to UNE-P.

In reality, SWBT's interpretation and implementation of the agreement has raised continuing, significant operational roadblocks. Particularly, SWBT's assessment of unexpected, inapplicable, and hidden non-recurring charges associated with UNE provisioning rendered the provisioning of UNE-P service in Arkansas economically unfeasible for Navigator.

a. Unjustifiably High NRCs

Navigator's attempt to provide UNE-based residential service in Arkansas was thwarted by SWBT's imposition of excessive non-recurring costs. For each existing Navigator resale customer that it converted to UNE-based service, Navigator was billed an average of \$210 in non-recurring charges by SWBT. These charges far exceeded Navigator's expectations based on a reasonable reading of its interconnection agreement. These charges far exceed what this Commission stated that SWBT charged for a similar conversion in its Order regarding the OK/KS 271 proceeding. See Kansas/Oklahoma Order ¶ 57.²

Navigator protested the applicability of these substantial charges; however, pursuant to the standard language of the interconnection agreement, it was required to pay the charges as billed, no matter how erroneously, and then dispute the charges, or face the threat that its service from SWBT would be discontinued.

Therefore, while Navigator endeavored to serve the consumers of Arkansas by offering competitive local services at competitive prices through UNE-based provisioning, unexpected (and from the face of its interconnection agreement, undiscoverable) costs soon made it clear that UNE-based provisioning was *not* a viable option in Arkansas. It was this undeniable

² "When a customer changes or "migrates" his or her telephone service provider from SWBT to a competitive LEC that provides service by leasing the unbundled network element "platform" (UNE-P), SWBT charges the competitive LEC a \$2.35 electronic service order charge, but does not assess any other nonrecurring charges." Kansas/Oklahoma Order ¶ 57.

circumstance, coupled with the fact that SWBT pointed to the existence of Navigator's UNE-based residential lines in Arkansas as evidence that facilities-based competition in Arkansas was thriving, that necessitated Navigator's comments to the Arkansas Public Service Commission during the 271 hearing there. See Arkansas PSC Tr. (4/20/01) at 44 (SWBT App.C-AR, Tab 82.)

SWBT states in its Brief that Navigator qualifies as a "Track A carrier" in that it "is in the market and operational" (SWBT Brief p. 12) and has an "interconnection agreement pursuant to which facilities-based competition is possible." (SWBT Brief, p. 11). Navigator's experience has shown that it is not possible to compete under its current agreement, because SWBT refuses to abide by the terms of that agreement. Notwithstanding SWBT's assertions to the contrary, Navigator's business decision that UNE-P was not viable in Arkansas was not based on a "marketing whim"; it was based on the reality that regardless of the provisions of the interconnection agreement and regardless of what SWBT's stated practice was in other comparable situations and markets, SWBT has in fact charged Navigator over \$200 in nonrecurring charges to convert each existing, working, Navigator residential customer line from resale to UNE-P.

Despite repeated and earnest efforts by Navigator to resolve this particular dispute with SWBT, it has been unable to do so, with the result that Navigator was forced to file formal

proceedings with the Arkansas Public Service Commission, which are currently pending.³

The dollar amounts in dispute (approximately \$2 million), while negligible to SWBT, are enough to substantially effect the operations and business decisions of a company the size of Navigator.

b. Illusory Promise of the A2A

While SWBT offers the A2A with its proposed rate schedules and lower prices as the answer to a CLEC's prayers, Navigator's experience shows that a CLEC cannot rely on the text of an interconnection agreement or SWBT's promised performance with any assurance. We have yet to learn what undisclosed charges and other hidden pitfalls lie in the pages of that document, or what strained interpretations of the contractual language SWBT will pursue, all with the ultimate effect of hindering a smaller company's ability to effectively compete under this new agreement. Although Navigator, faced with no other real choice, exercised its existing contractual right to opt in to portions of the A2A effective July 1, 2001, SWBT to date has still not adjusted its billing of Navigator to reflect the lower prices.

IV. BILLING ERRORS

The billing systems of SWBT have been the source of a great deal of difficulty and frustration. Charges are routinely and continuously misapplied. In one instance of local calls billed as long distance, the problem has been recurring for over a year. Navigator receives assurances from SWBT account representatives and billing departments that the problem is being fixed, but it never is. Navigator receives bills containing charges bearing a description not found

³ Navigator Telecommunications, LLC. v. Southwestern Bell Telephone Company Amended Complaint and Petition for Declaratory Relief, filed June 28, 2001 (AR PSC Docket No. 01-135-C).

in any interconnection agreement, tariff, or any amendments thereto. Some charges are inflated, with no explanation. SWBT has acknowledged on repair calls that the problem was on their side of the demarc, but has billed Navigator for the trip charge and the wiring charge. Navigator has received recurrent monthly bills for phone numbers that have been verified through SWBT's system as disconnected.

a. High Rate of Error in SWBT's bills to Navigator

Virtually every bill that Navigator receives from SWBT is rife with errors. Recent reviews indicate that erroneous charges constitute 25% of the total current company billings to Navigator from SWBT. Whether the bills contain erroneous charges, unknown and unidentifiable charges, miscalculations, or imposition of rates in excess of our interconnection agreement, the errors are constant and pervasive. Each of these errors must be disputed. Often, answers to questions regarding misidentified or unidentified charges are weeks in coming, if they come at all. Meanwhile, SWBT continues to hold a contractual gun to Navigator's head, demanding payment of disputed charges before disputes are resolved. These continuous and ongoing billing problems drain the resources of a small company like Navigator.

b. "Pay and Dispute", and the Fiction of "Negotiation"

As the onerous "pay first, then dispute" provision described above illustrates, the ability of a small CLEC to "negotiate" an agreement with SWBT is a fiction. What bargaining power does a small CLEC really have when dealing with SWBT? None, especially when a CLEC's practical concern is to get an agreement in place so it can do business, rather than forestall operations while spending months in "negotiations". The reality for a small company like Navigator is that it is forced to accept whatever SWBT deems to offer, a "take it or leave it"

proposition that amounts to little more than a contract of adhesion. Then, when a company like Navigator does have a legitimate dispute, SWBT can stretch it out beyond endurance, draining the smaller company's resources and effectively cutting off the possibility of viable competition at the root.

V. OPERATIONAL ROADBLOCKS

Navigator experiences a variety of recurring OSS problems with SWBT. These day-to-day problems create a barrier to entry and frequently cause Navigator to lose customers to SWBT. The difficulty, and anti-competitive effect, is heightened by the lack of parity between the way SWBT treats Navigator orders and the way it treats SWBT Retail orders.

a. Common Recurring Ordering Problems

A few examples of common problems include the following:

- Navigator uses the SWBT provided OSS (Verigate) to reserve a telephone number (TN) for a customer, and issues an order to SWBT based on that TN. SWBT later accesses different systems that indicate the TN reserved by Navigator through Verigate is already in use. SWBT then rejects Navigator's order, with the effect of causing the order install period to restart, which subsequently can cause dispatch-scheduling problems. The result is frustrating delays for the customer. In contrast, when SWBT Retail encounters a similar problem, SWBT simply changes the TN on the order, keeps the same install date, and informs the customer of the new TN. Navigator's unnecessarily long installation intervals caused by this disparity in treatment frequently results in Navigator losing that customer to SWBT.

- When Navigator places orders using Verigate, via TOOLBAR, SWBT has been providing Navigator TNs that are already in service for end-users served by other CLECs. Navigator's orders are then sent back by SWBT with a jeopardy notice, to be resent with another TN. This process causes a one to two day delay in providing service to a customer.
- Navigator will have a customer that is a new resident in an apartment or house. Verigate indicates that there is currently no working service on premises (WSOP). Navigator places the order to install service at that location. SWBT then rejects the order on the basis that there is WSOP, because the previous resident's service has been suspended. Alternatively, Verigate will show WSOP when there is none. Either way, Navigator must send a supplemental order to SWBT to have the installation of service completed. More delays for the customer.
- When reserving telephone numbers for a TN change or transfer, Navigator pulls the numbers from Verigate. Navigator places the order, and it is sent back by SWBT, showing "invalid TN." Three common scenarios ensue: 1) Navigator calls SWBT's local service center (LSC). The LSC informs Navigator that the TN is invalid and Navigator will have to "pull another one", or the LSC informs Navigator that the number is not invalid and the LSC does not know why the order was rejected. Navigator must send a supplemental order for completion. 2) If the actual problem is that Verigate pulled a TN from the wrong central office (CO), when Navigator tries to pull another TN, Verigate provides Navigator with another TN from the same wrong CO. Navigator must then call the LSC and have it reserve a TN for Navigator's order. 3) Navigator pulls the TN from

Verigate, places the order, and SWBT returns a firm order confirmation (FOC); a technician will go out to the customer site for installation, and will then reject the order for incorrect TN because the TN is out of the wrong CO. This can cause a 3 to 10 day delay in providing customer service.

b. SWBT's Inability to Install Complex Services

SWBT has shown repeated inability to correctly install complex services such as a UNE T1. Navigator's experience is that SWBT has been unable to install a UNE T1 correctly on the first attempt in any of the five original Midwest states. In Navigator's last two orders for UNE T1s in Arkansas, SWBT missed the committed due dates, requiring an additional 24 to 48 or more hours of coordination to correctly program SWBT Central Offices. Business customers relying on such phone service have very little tolerance for that kind of non-performance. SWBT's repeated failure to timely perform the provisioning of complex services directly affects Navigator's ability to offer certain types of business services with the confidence that the service can be installed correctly on a timely basis.

c. SWBT's Failure to Consistently Follow its own Procedures on Routine Orders

Navigator's attempts to provide simple residential services are impaired by SWBT's inability to follow its own procedures on simple orders. A few examples of frequently recurring problems caused by SWBT's failure to follow its own procedures:

- Navigator places orders for service and receives confirmation of completion from SWBT; however the order was not completed "in the switch", so when the TN is dialed, the call is sent to an intercept message.

- Navigator orders are rejected in error by SWBT. When a Navigator representative calls to inquire about the rejection, SWBT advises that the rejection was issued in error and for Navigator to resubmit the order.
- SWBT systems reflect that a Navigator order is in Firm Order Completion (FOC) status, but when a Navigator representative calls on the order, SWBT advises that the order is in Jeopardy status. Navigator never received the Jeopardy.
- Navigator orders to add blocks or restrictions to customer lines are processed by SWBT but the blocks or restrictions are not put in place. Navigator is unable to correctly bill the customer.
- Navigator submits an order to convert a resale customer to UNE, and SWBT completes the order with the wrong Consolidated Billing Account (CBA). Navigator is unable to correctly bill the customer.
- Navigator places an order for conversion of a customer from another CLEC or from SWBT; SWBT shows the order completed but not posted; SWBT receives a request from the customer's previous provider to suspend or disconnect the customer's line which results in the customer being taken out of service; Navigator contacts SWBT to advise that Navigator's order had completed and that the customer was now a Navigator customer; SWBT must type another order to restore the customer's service.

All of these seemingly mundane scenarios are common, regular, recurrences in Navigator's day-to-day operation. They all cause delay, service interruptions, or billing problems for the consumer. The consumer is frustrated, and Navigator's ability to compete is impaired by SWBT's action.

d. Other Problems

The operational issues described above are just a sample of the more common recurring problems in dealing with SWBT. There are many others. SWBT committed to providing procedures and access to centralized demarcation points (demarcs) at apartment complexes and other multiple dwelling units as part of the SBC-Ameritech Merger Conditions. Navigator experiences numerous problems involving access to centralized demarcs. These range from poor outside plant conditions and cable facility problems, to SWBT field technicians making false and misleading comments to consumers regarding Navigator's provision of services. SWBT unnecessarily changes pair assignments, causing customer service outages that require Navigator to dispatch service technicians.

Navigator has also experienced a variety of repair issues with SWBT relating to UNE-based service. These include simple matters such as completing trouble tickets, and long-standing problems involving SWBT systems errors that result in erroneous long-distance charges for local calls made by Navigator customers.

Each of these problems impacts consumers. When those consumers are Navigator customers or potential customers, the resulting service delays, interruptions, and billing errors significantly impact Navigator's ability to compete. Problems that SWBT persistently fails to address or correct serve as barriers to competition. SWBT should not be allowed to benefit from its claims that opportunities for competition exists while simultaneously smothering competitors through its own action, inaction, or nonperformance.

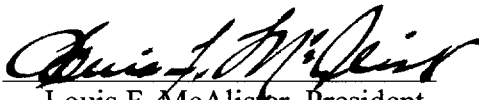
VI. CONCLUSION

As Navigator has attempted to illustrate by way of these comments, real and meaningful competition in Arkansas is nonexistent, especially with regard to facilities-based residential services. Although Navigator has made valiant efforts to provide such service, and remains tenaciously determined to provide Arkansas consumers a choice, Navigator's ability to compete has been limited by the actions of SWBT. The Commission need not rely solely on the hundreds of thousands of pages of documents submitted by SWBT in this proceeding, but should also consider the voices of those small CLECs, like Navigator, and the glimpse they provide beyond the smoke and mirrors of SWBT's presentation. The competition-killing actions of SWBT are systemic. Navigator respectfully requests that the Commission deny SWBT's application for §271 authority in Arkansas until such time as SWBT address the problems that have effectively denied the people of Arkansas the benefits of true competition.

Respectfully submitted,

Navigator Telecommunications, LLC.

Dated: September 10, 2001

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